

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 04-1864

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Stanley Smith, as Executor for the  
Estate of Jenny Smith, Deceased,

Appellant,

v.

Mike Beebe, Arkansas State Attorney  
General; State of Arkansas,

Appellees.

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Appeal from the United States  
District Court for the Western  
District of Arkansas.

[UNPUBLISHED]

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Submitted: February 14, 2005  
Filed: February 22, 2005

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Before MELLOY, HEANEY, and FAGG, Circuit Judges.

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PER CURIAM.

Jenny Smith lived in an Arkansas nursing home. In September 1993, she was not properly secured in her bed and fell, causing head trauma and other injuries that led to her incapacity for several months. Jenny died in December 1994. A year later, Stanley Smith, executor of Jenny's estate, brought a medical malpractice lawsuit against the nursing home. An Arkansas state court held the lawsuit was barred by the two-year medical injury statute of limitations. Ark. Code Ann. § 16-114-203(a) (Michie 1993). The court also held the one-year tolling provision for persons "who had been adjudicated incompetent at the time of the act, omission, or failure

complained of” did not apply. Ark. Code Ann. § 16-114-203(e) (Michie 1993) (repealed). Smith then brought this civil rights action under 42 U.S.C. § 1983 against the State of Arkansas and the Arkansas attorney general asserting the now-repealed tolling provision was unconstitutional. The district court\* dismissed the action as barred by sovereign immunity.

Sovereign immunity deprives federal courts of jurisdiction over lawsuits brought by private citizens against states unless the state has waived its immunity or Congress has abrogated the state’s immunity under a valid exercise of Congressional power. Here, the States of Arkansas has not consented to be sued in the federal courts, Burk v. Beene, 948 F.2d 489, 492-93 (8<sup>th</sup> Cir. 1991), and Congress did not abrogate the states’ sovereign immunity when it enacted 42 U.S.C. § 1983, id.; Will v. Michigan Dept. of State Police, 491 U.S. 58, 66-67 (1989). Thus, sovereign immunity bars Smith’s § 1983 claim against the State. Smith’s claim against the state attorney general is also barred, see id., and his claim for money damages was barred and properly dismissed, see Burk, 948 F.2d at 492-93.

Smith appeals asserting the exceptions to sovereign immunity should be broadened to encompass his situation. We lack authority to do so. Although Congress may abrogate the states’ sovereign immunity, we are bound by the Supreme Court’s holding in Will that Congress did not do so when it enacted § 1983. Further, the limited exemption to sovereign immunity in Ex parte Young, 209 U.S. 123 (1908), does not apply here because the state attorney general has no special relation to the tolling provision challenged by Smith. See Children’s Healthcare is a Legal Duty, Inc. v. Deters, 92 F.3d 1412, 1415-16 (6<sup>th</sup> Cir. 1996); Sherman v. Community Consolidated Sch. Dist., 980 F.2d 437, 440-41 (7<sup>th</sup> Cir. 1992); Long v. Van de Kamp,

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\*The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.

961 F.2d 151, 152 (9<sup>th</sup> Cir. 1992) (per curiam); Rode v. Dellarciprete, 845 F.2d 1195, 1208 (3d Cir. 1988).

Because Smith's claims against the State and its attorney general are barred by sovereign immunity, we affirm the district court's dismissal of Smith's lawsuit.

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